

ROY COOPER
ATTORNEY GENERAL



State of North Carolina

Department of Justice
PO Box 629
Raleigh, North Carolina
27602

REPLY TO:
Jason R. Rosser
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
(919) 716-6680

March 28, 2016

Erin Collins
Hedrick, Gardner, Kincheloe &
Garofalo LLP
6770 Parker Farm Drive, Suite 300
Wilmington, North Carolina 28405

Re: Commissioner v. Cumberland County Board of Education DPI#494
OSHANC No. 2015-5732; Inspection No.: 317997823

Dear Mr. Collins:

Enclosed are the Settlement Agreement, Consent Order, Notice of Settlement to Employees and Certification of Posting in the above-referenced case. Please

1. Sign the Settlement Agreement and sign the Consent Order. **DO NOT DATE**
2. Post the Settlement Agreement and Notice of Settlement to Employees for 15 working days, in accordance with North Carolina Occupational Safety and Health Review Commission Rule of Procedure .0701(c).
3. Sign and date the Certification of Posting after the 15-day posting period.
4. Return the original, signed Settlement Agreement, Consent Order, and Certification of Posting to me at the above address.

In order to expedite settlement, please sign, post, and return the documents to me by **April 27, 2016**. After my client has signed the Settlement Agreement and Consent Order, I will forward them to the North Carolina Occupational Safety and Health Review Commission for the Hearing Examiner's approval.

Payment of the penalty is by check or money order made payable to **NC Department of Labor, OSHA Division** and should include the inspection number. Send the payment directly to the Department of Labor, addressed to **Jack Brinson, Budget Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101**. If you have any questions, please contact me at the above address or telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason R. Rosser".

Jason R. Rosser
Assistant Attorney General

Enclosures

cc: Karissa Sluss, N.C. Occupational Safety & Health Review Commission (w/o enc.)
Kaye Thibodeaux, District VIII Compliance Supervisor, DOL (w/o enc.)

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO.: OSHANC 2015-5732
COMPLAINANT,)	INSPECTION NO.: 317997823
v.)	CSHO ID.: H9336
CUMBERLAND COUNTY BOARD OF EDUCATION DPI #494 <i>and its successors</i>)	<u>STIPULATION</u> <u>AND NOTICE OF</u> <u>SETTLEMENT</u>
RESPONDENT.)	

NOW COME the parties in the above-captioned action, pursuant to Rule .0701 of the Rules of Procedure adopted by the North Carolina Occupational Safety and Health Review Commission, and respectfully show unto the Hearing Examiner as follows:

FACTS

1. Respondent is a corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Fayetteville, North Carolina.
2. On June 23, 2015, John Jaskolka, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite.
3. As a result of the inspection, on July 21, 2015, Complainant issued the following Citations:

CITATION NUMBER ONE (Non-Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1904.39(a)(2)	7/27/2015	\$2,000.00

4. The Respondent submitted a timely Notice of Contest, dated August 28, 2015.
5. The parties having reached a Settlement Agreement now seek approval of said Agreement by the Hearing Examiner.

STIPULATIONS

Effective upon approval of this Stipulation and Notice of Settlement, the parties to this action hereby agree and stipulate to the following settlement of the matters at issue herein:

1. Respondent agrees that the violations alleged in the Citation and Notification of Penalty, as amended, have been abated, and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act").
2. Complainant agrees to make the following amendments to the Citations:
 - a) Reduce the adjusted proposed penalty from \$2,000 to \$1,000.
3. Respondent agrees to continue with a safety program.
4. Respondent created an accident report form to submit to NCOSH for reportable events under 29 CFR 1904.39(a)(2).
5. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Stipulation and Notice of Settlement.
6. Upon approval of this Stipulation and Notice of Settlement by the Hearing Examiner, the Respondent agrees to pay the new proposed penalty of \$1,000.00 within ten (10) days following the receipt of the Order approving the Stipulation and Notice of Settlement.
7. Respondent agrees that by signing this Stipulation and Notice of Settlement and upon approval of said Stipulation and Notice of Settlement by the Hearing Examiner, its Notice of Contest

is withdrawn as a matter of law. In any subsequent proceeding with respect to matters covered by this Stipulation and Notice of Settlement brought directly under the Act by Complainant, this Agreement shall have the full force and effect of a final order.

8. The parties agree that there are no other matters that remain to be decided, and there has been no employee objection to the reasonableness of any abatement period.

9. Respondent shall post this Stipulation and Notice of Settlement in accordance with Rules .0107(e), .0107(f), .0107(h) and .0701(c) of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

WHEREFORE, the parties to this action hereby respectfully request approval of this Stipulation and Notice of Settlement.

This the _____ day of _____, 2016.

APPROVED BY:

Kaye Thibodeaux
District VIII Compliance Supervisor
Occupational Safety and Health Division

ROY COOPER
Attorney General

Jason R. Rosser
Assistant Attorney General
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ATTORNEYS FOR COMPLAINANT

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Wilmington, NC 28405

Telephone No. (910) 509-9630

ATTORNEY FOR RESPONDENT

**NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
1101 Mail Service Center
RALEIGH, NORTH CAROLINA 27699-1101**

SETTLEMENT - EMPLOYEE RIGHTS

TO THE EMPLOYEES OF CUMBERLAND COUNTY BOARD OF EDUCATION DPI #494:

Your employer has been charged with a violation of the Occupational Safety and Health Act of North Carolina. A proposed settlement concerning the nature of the violations, the penalty, and the period of abatement has been tentatively reached by the Department of Labor and your Employer. Pursuant to Rule .0701(c) of the Rules of Procedure of the Review Commission, any objections to the reasonableness of any proposed abatement date must be filed within 15 working days or the settlement may be approved as written. Objections should be filed with the North Carolina

Occupational Safety and Health Review Commission at:

North Carolina Occupational Safety and Health Review Commission

1101 Mail Service Center

Raleigh, North Carolina 27699-1101

You may also inspect all documents related to this contest at: **(EMPLOYERS, WRITE ON
THE LINE BELOW THE LOCATION WHERE EMPLOYEES MAY VIEW**

DOCUMENT BEFORE YOU POST THIS FORM.):

**AS AN AFFECTED EMPLOYEE, YOU HAVE THE RIGHT TO PARTICIPATE AS A
PARTY, BUT TO DO SO YOU MUST REQUEST SUCH STATUS BY CONTACTING THE
OFFICE ABOVE.**

FOR INFORMATION OR INSTRUCTIONS CONTACT: (919) 733-3589

(Revised 3/9/12)

CERTIFICATION OF POSTING

FROM: CUMBERLAND COUNTY BOARD OF EDUCATION DPI #494

TO: North Carolina Occupational Safety and Health Review Commission

1101 Mail Service Center

Raleigh, North Carolina 27699-1101

SUBJECT: Certification of Settlement Agreement Posting
OSHANC NO. 2015-5732
INSPECTION NO. 317997823
CSHO ID NO. H9336

LOCATION OF POSTING: _____

(Write on this line the location where the settlement was posted.)

I hereby certify that the complete text of the settlement agreement entered into by and between the complainant and respondent in this action has been posted for a period of at least fifteen (15) days in at least one location where all affected employees have an opportunity to read the said settlement agreement in accordance with the provisions of Rule .0107(e) and .0107(f), .0107(h), .0701(c), of the rules of procedure adopted by the North Carolina Occupational Safety and Health Review Commission.

I further certify that, to the best of my knowledge and belief, no employee or authorized employee representative has indicated to any owner, officer, or management official of this company dissatisfaction or disagreement with the terms and provisions of the aforesaid Settlement Agreement.

This the _____ day of _____ 2016.

Signature

Title

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA) DOCKET NO.: OSHANC 2015-5732
) INSPECTION NO.: 317997823
) CSHO ID.: H9336
COMPLAINANT,)
)
v.)
)
CUMBERLAND COUNTY BOARD OF EDUCATION DPI #494) <u>CONSENT ORDER</u>
<i>and its successors</i>)
)
RESPONDENT.)

This cause comes on to be heard before the undersigned Hearing Examiner (the Court) and being heard upon consent of the parties hereto, upon consideration of the Stipulation and Notice of Settlement submitted by the parties (the Agreement), the Court makes the following:

FINDINGS OF FACT

1. That the Agreement is reasonable and supported by the underlying facts.
2. That no outstanding issues remain to be resolved by a hearing of this matter.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to this action and over the subject matter.
2. That the Agreement is consistent with the purpose and objectives of the Occupational Safety and Health Act of North Carolina (The Act), and complies with Rule .0701 of the Rules of Procedure of the North Carolina Occupational Safety and Health Review Commission.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Agreement is approved.
2. That both parties are hereby required to comply with the terms and conditions stipulated in the agreement.

This the _____ day of _____, 2016.

R. Joyce Garrett
Hearing Examiner

BY CONSENT:

ROY COOPER
Attorney General

Jason R. Rosser
Assistant Attorney General
North Carolina Department of Justice
P O Box 629 / Labor Section
Raleigh, North Carolina 27602
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